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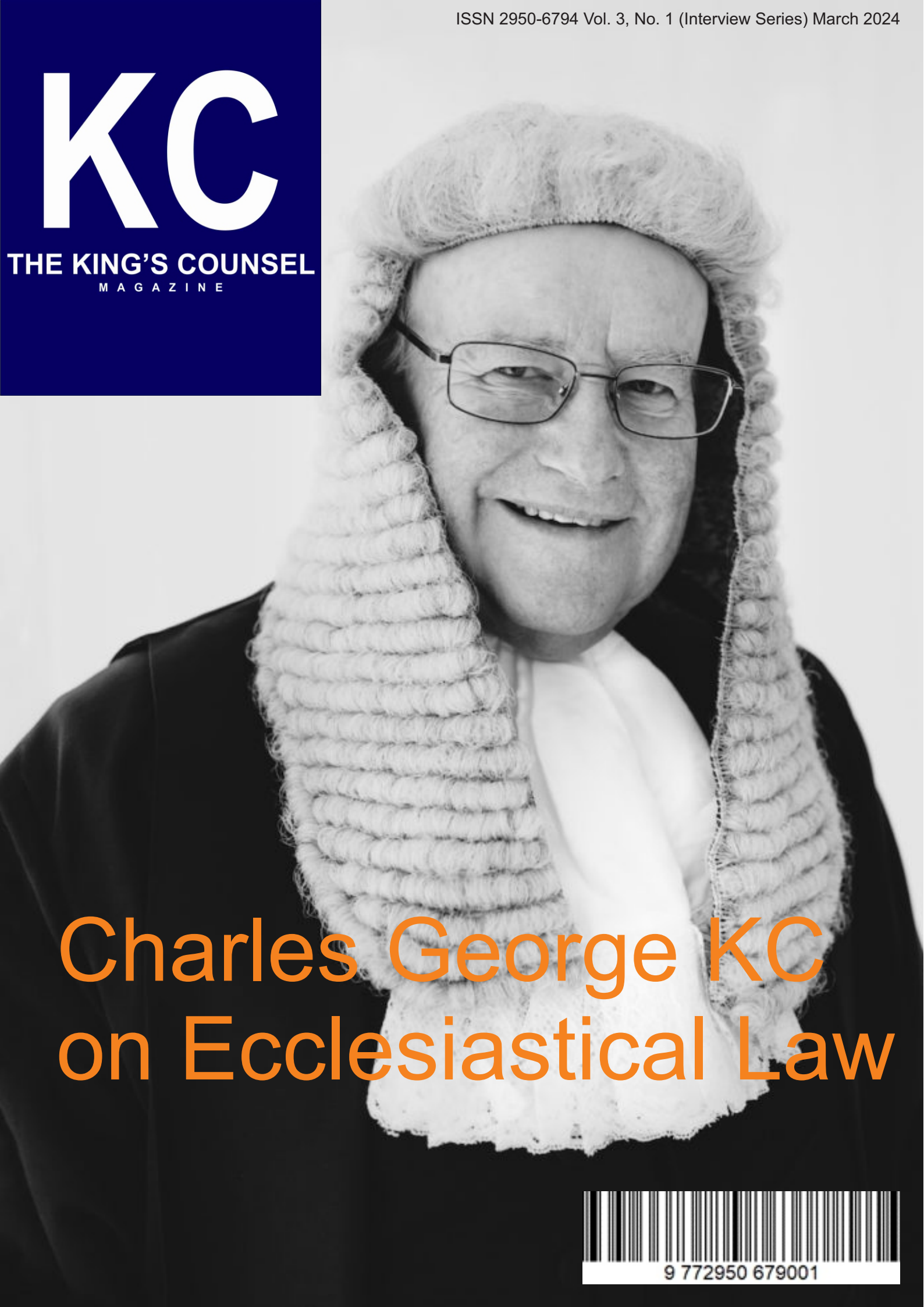

Charles George KC on Ecclesiastical Law

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Charles George KC on Ecclesiastical Law

Charles George graduated with a First Class Honours from Magdalen College, Oxford in 1966. He was called to the Bar, Inner Temple in 1974 (Bencher 2001), took his silk QC in 1992. He was a Recorder of the Crown Court from 1995 to 2017 and Chancellor of the Diocese of Southwark from 1996 to 2009. He became the Dean of the Arches and Auditor of the Chancery Court of York and Master of the Faculties from 2009 to 2020 He was authorised under s.9 of the Senior Courts Act 1980 to sit as a judge of the High Court from 2010 to 2017. He appeared before the House of Lords/Supreme Court in landmark case involving **human rights** (*S.Buckinghamshire DC v Porter (No.1)* and *Aston Cantlow Parochial Church Council v Wallbank)*; **the duty to give reasons** *(S.Buckinghamshire DC v Porter (No.2);* **town and village greens** (*Oxfordshire County Council v Oxford City Council*; *R(Lewis) v Cleveland and Redcar Borough Council* and *Newhaven Port & Properties Ltd v East Sussex County Council;* **ecology in town and country planning** *(R(Morge) v Hampshire CC.* All these cases involved public law issues, and ultimately turned on the proper interpretation of statutory provisions.

In 2021 he was awarded by the Archbishop of Canterbury The Canterbury Cross for Services to the Church of England "For his unique contribution to the application and development of ecclesiastical law".

The AAL Magazine: Charles George kC, we are honored to have your consent for this interview. You have had a distinguished legal practice having been culminated in becoming the Dean of the Arches of the Church of England. This is a very rare opportunity for a Queen's Counsel to be a Judge of an Arches Court of Canterbury. A judge of this caliber must have a deeper understanding of the ecclesiastical law in addition to being thorough with English law. You claimed that you are now retired from the Bar after having spent 40 years of arguing, consulting law books, dispensing justice, and reflecting deeply about the life of individuals tasked with expounding the Christian Theology. How can you stay retired when you have such a vast reservoir of knowledge? Don't you think in the eyes of God, 'retirement' is a prohibited word, if I may say so – perhaps in lighter vein?

Charles George KC: I was privileged to be the senior ecclesiastical judge for eleven years, from 2009-2020, and to be able to postpone retirement till the maximum retirement age of 75. The position was a part-time one which, for most of the time I combined with my work in private practice as a barrister and as a part-time secular judge. Whilst I miss the intrinsic interest and companionship that such work brought, there comes a time when there is a danger of staleness. I enjoy my retirement in Kent, close enough to London but also to some wonderful countryside. I hope that does not sound too pompous or boring.

The AAL Magazine: Could you please explain to us the structure of the Church of England and the role of the

Ecclesiastical Courts. What types of cases were brought before you?

Charles George KC: The Church of England is an "established" church, that is it is part of the constitution of England (but not Wales, Scotland or Northern Ireland) with the Queen at its head as Supreme Governor (as has been the position since Henry VIII broke with the Papacy). Parliament has delegated to the General Synod of the Church of England the task of formulating and revising ecclesiastical law, through Measures which are subject to Parliamentary approval and the Royal Assent. The ecclesiastical courts originally had very wide powers, over much of contract law, wills, and marriage/divorce. Now the ecclesiastical courts have a much more limited role in determining what apart from worship can be carried out in churches and what changes can be made to the fabric and appearance of churches and their churchyards. This is known as the faculty jurisdiction, and is administered in each diocese by its consistory court. There is a significant power to grant injunctions and make restoration orders, which in one recent case involved an order for the demolition of a recently but unlawfully erected local authority nursery school in a churchyard (*Re Christ Church, Spitalfields (no.2)* [2019] EACC 1; [2019] Fam 343). The ecclesiastical appeal courts (the Arches Court of Canterbury, and the Chancery Court of York) also have jurisdiction over clergy disciplinary appeals from bishops' disciplinary tribunals. There are also many areas where ecclesiastical law is enforced through the secular courts, for example Chancel Repair Liability which attaches to certain land is enforced through the secular courts.

The AAL Magazine: How does the Episcopal Church of US and other Anglican Communions follow their adjudication of canon law issues? Do they derive precedence or *stare-decisis* from cases decided by the Church of England or do they have their own way of adjudicating disputes?

Charles George KC: The Provinces of the Anglican Communion have their own procedures for determining these matters and do so without regard to decisions of the English ecclesiastical courts. An exception is the disestablished Church of Wales which operates a system very similar to the English faculty jurisdiction and whose courts are much influenced, though not bound, by English ecclesiastical court decisions.

The AAL Magazine: Does a litigant have a right of appeal to the UK Supreme Court?

Charles George KC: No, but the Judicial Committee of the Privy Council (consisting of the members of the UK Supreme Court) can grant permission to appeal from the ecclesiastical appeal courts. In the last 50 years there has only been one such application for permission to appeal, and this was refused as not raising a point of

sufficient public importance to warrant a further appeal.

The AAL Magazine: We have studied English Law, but Ecclesiastical law is never taught at LLB level. We would like to know how Ecclesiastical Law is grounded and whether it can be linked with English common law. Under what circumstances do you derive English law principles?

Charles George KC: Ecclesiastical law is grounded in Statutes made by Parliament and Measures emanating from the General Synod of the Church of England, but approved by Parliament. There is also a considerable body of case-law. Decisions of the ecclesiastical appeal courts are binding on consistory courts, the first-instance ecclesiastical courts. Ecclesiastical courts are much influenced by, but not bound by, English common law and its principles. Ecclesiastical Law used to be taught at the University of Cambridge, but now the only course is a very popular postgraduate one in Canon Law run by the University of Cardiff (and leading to an LLM). (Although strictly Canon Law relates solely to the content of Canons of the Church of England only binding on the clergy and a very few others, the term Canon Law is usually used interchangeably with Ecclesiastical Law).

The AAL Magazine: How does Ecclesiastical law square with UK Human Rights Act of 1998? The realm of the Ecclesiastical law covers, church property, charitable trust, discipline of clergy and religious liberty, Have there been any instances where you had to refer to the European Union jurisprudence. What was the situation prior to UK joining the EU in 1972?

Charles George KC: I am unaware of any areas where European Union jurisprudence has affected decisions of ecclesiastical courts, so that Brexit has not made any difference. Ecclesiastical courts are bound by the UK Human Rights Act 1998, and human rights issues quite frequently arise in the ecclesiastical courts, for example most recently in the Court of Arches decision in *St Giles, Exhall* [2021] EACC 1 where such issues arose in connection with the lawfulness of an inscription in Gaelic on a grave in a Church of England cemetery. One of the leading decisions of the secular courts on the interpretation and scope of the Human Rights Act 1998 is an ecclesiastical law case, *Aston Cantlow Parish Church Council v. Wallbank* [2003] UKHL 37 on Chancel Repair Liability.

The AAL Magazine: If I may venture into more theological aspects such as right to abortion. What is the policy of the Church of England on this controversial issue? There has been a case Ref. *In the matter of an application by the Northern Ireland Human Rights Commission for Judicial Review (Northern Ireland)* decided by the UK Supreme Court in which the Court took into consideration that "the community undoubtedly does have a moral interest in protecting the life, health and welfare of the unborn - it is that interest which underlies many areas of the law, including the

regulation of assisted Page 9 reproduction, and of the practice of midwifery, as well as of the termination of pregnancy. But the community also has an interest in protecting the life, health and welfare of the pregnant woman - that interest also underlies the regulation of assisted reproduction, of midwifery and of the termination of pregnancy. And pregnant women are undoubtedly rights-holders under the both the Convention and domestic law with autonomy as well as health and welfare rights. The question, therefore, is how the balance is to be struck between the two'' How would you respond to this scenario from a theological perspective? What is the policy of the Church of England on abortion necessitated by the medical condition and on unwanted pregnancy arising from rape etc ?

Charles George KC: The Church of England's stated position, as reaffirmed in 2019, combines principled opposition to abortion with a recognition that there can be strictly limited conditions under which abortion may be morally preferable to any available alternative. This is based on the view that the foetus is a human life with the potential to develop relationships, think, pray, choose and love. This is not, however, a matter within the jurisdiction of the Church of England ecclesiastical courts.

The AAL Magazine: As you know more people now prefer to engage in Alternative Dispute Resolution -ADR than pursuing a Court case, as it would be too costly, time consuming and the unpredictability of the outcome. How is the Church of England pursuing ADR methods? Is there a mechanism within the Church?

Charles George KC: There have been rare clergy disciplinary cases which have been resolved through ADR. So far as I am aware ADR has never been used in connection with a contested faculty case, nor would ADR be capable of delivering the necessary faculty (or permission) which is the subject-matter of almost all cases in the ecclesiastical courts.

The AAL Magazine: There is a clamor by some special interest groups to legalize cannabis. How does this square with the ecclesiastical policy of the Church. If legislation is introduced, by what method can the Church thwart such blatant immorality? Legalizing cannabis goes to the very root of existential evils in our society. By what way can the Church intervene legally or by a moral edict?

Charles George KC: Whilst the Church of England is supportive of the medicinal use of marijuana in certain cases, it has no policy in relation to easing or altering other restrictions on the use of drugs. This again is a matter outside the scope of the ecclesiastical courts, although the taking of illegal drugs by members of the clergy is a feature which occurs from time to time in disciplinary cases coming before Bishops' Disciplinary Tribunals. If Parliament were to legalise the taking of certain drugs, the Church of England would be bound by such legislation,

though it could still treat the taking of drugs as conduct unbefitting a member of the clergy, as it does at present where clergy are warned to "avoid the influence of alcohol or drugs" and a distinction is drawn between conduct which is legal and what is "morally acceptable" (see *Guidelines for the Professional Conduct of the Clergy*, 2015, paras 10.1 and 10.9).

Photo credits; Ecclesiastical Law Society https://ecclawsoc.org.uk/events/charles-george-qc-on-do-we-still-need-the-faculty-system/ Interview was originally had with our sister Magazine The Anglo-American Lawyer

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